THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.12641 OF 2005

DATED: 06-04-2006

BETWEEN

Smt. Sarvasri Veerni Parvathi,
W/o. Venu Gopala Satyanaryana Chary,
R/o. D.No.10-13-19, Anakapalli and
Others.

...PETITIONERS

AND

The Anakapalle Municipality,
Rep. by its Commissioner,
Anakapalle, Visakhapatnam District
and others.

...RESPONDENTS

ORDER:

Petitioners seek a Writ of Mandamus to declare the demolition of property of the petitioners given in Annexure-II without following the procedure as illegal and arbitrary.

Learned counsel for the petitioners submits that the petitioners are all residents of Anakapalli Town and their property is abutting the main road and they have been paying property tax to the first respondent. The third respondent who has jurisdiction over the Anakapalli town had drawn a master plan for road widening. While so, the first respondent issued a notice to the petitioners stating that the municipal council has passed resolution for widening the road and the Government had also sanctioned funds to the R & B Department.

The notice further states that the municipality is conferred with powers to remove the structures falling within the alignment of 80' of road widening purpose.

The learned counsel further submits that for the purpose of widening the road the respondents earmarked the structures belonging to the petitioners and the respondents are proposing to demolish the same without following due procedure prescribed in law. He further submits that even under the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act') without acquiring the lands of the private citizens, portion of any property cannot be taken away for the purpose of road widening, either by way of private negotiations or by way of initiating proceedings under the Act. He further submits that the petitioners have not encroached any road and they have constructed the buildings or structures as per the approved plan only.

No doubt widening/laying of the road is in the public interest but while laying the road, if any property of private individual is coming in the way, it is for the respondents to acquire the same by following due process of law. This Court disposed of a number of writ petitions directing the respondent not to demolish the houses of the private citizens without following due process of law or private negotiations.

Having regard to the facts and circumstances of the case,
the respondents are directed not to demolish or take away any portion of the property of the petitioners and not to dispossess them without following due process of law under Section 172(2) or 174 of the Act.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

April 6, 2006
DSK